

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
October 23, 2007 Session

**CHRISTOPHER L. WILLIAMS v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Davidson County**  
**No. 2001-C-1673 Cheryl Blackburn, Judge**

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**No. M2007-00386-CCA-R3-PC - Filed February 21, 2008**

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The petitioner, Christopher L. Williams, appeals from the Davidson County Criminal Court's summary dismissal of his petition for post-conviction relief. He claims that the trial court erred in dismissing his petition as untimely, contending that it was filed within one year of the issuance of the mandate following the direct appeal, that due process requires tolling of the statute, and that the trial court erred in holding that a delayed Rule 11 appeal was not available. We disagree, and we affirm the trial court's dismissal.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and J.C. McLIN, JJ., joined.

Theodora A. Pappas, Nashville, Tennessee, for the appellant, Christopher L. Williams.

Robert E. Cooper, Jr., Attorney General and Reporter; Elizabeth B. Marney, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Bret Thomas Gunn, Assistant Attorney General, for the appellee, State of Tennessee.

**OPINION**

The petitioner was convicted of three counts of especially aggravated kidnapping. He was sentenced as a Range I, standard offender to serve twenty-five years for each count. The sentences were imposed consecutively. Following his convictions, the petitioner's trial attorney filed an appeal to this court. This court's opinion in the petitioner's appeal was filed on March 16, 2005. The attorneys for the petitioner's two codefendants were granted permission to withdraw, and the two codefendants filed pro se applications for permission to appeal to the Tennessee Supreme Court, which were denied on October 10, 2005. The mandate was issued on October 26, 2005. See State v. Christopher Williams, No. M2003-00517-CCA-R3-CD, Davidson County (Tenn. Crim. App. Mar. 16, 2005) (designated not for citation), app. denied (Tenn. Oct. 10, 2005) (applications filed by co-defendants).

Through different counsel, the petitioner filed a petition for post-conviction relief on October 18, 2005. He filed amended petitions on October 26 and November 7, 2006. The petitions all relied on allegations of ineffective assistance of counsel which fell into two categories: (1) those related to counsel's deficient performance in preparing for trial and representing the petitioner at trial, and (2) those related to the failure to withdraw following the direct appeal to this court pursuant to Rule 14 and the failure to file a Rule 11 application on the petitioner's behalf or advise the petitioner of his right to file a pro se Rule 11 application. See Tenn. Sup. Ct. R. 11, 14.

The trial court found that the petition was untimely and dismissed it without a hearing. The petitioner has appealed and claims that the trial court erred in its construction of the one-year statute of limitations. The petitioner argues that the one-year period should begin to run from the issuance of the mandate, that being the "final action" contemplated by Code section 40-35-102 for determining when the one-year period for post-conviction relief commences. He also argues that even if his petition were untimely under the statute, the trial court erred in failing to afford him a hearing to determine whether due process required that the statute of limitations be tolled. He argues, as well, that the trial court erred in determining that a delayed Rule 11 appeal was not an available post-conviction remedy.

We begin with the petitioner's claim that the statute of limitations began to run when this court issued the mandate on October 26, 2005. The petitioner's argument relies on his interpretation of Code section 40-35-102(a), which states in pertinent part that a post-conviction action must be commenced "within one (1) year of the date of the final action of the highest state appellate court to which an appeal is taken[.]" The state argues that the one-year period commenced from the time this court filed its opinion. Because the state's position is consistent with our past interpretations of the commencement of the statutory period, we agree with the state. Joseph W. Wilson v. State, No. W2005-00808-CCA-R3-PC, Madison County (Tenn. Crim. App. Oct. 31, 2006) (holding that post-conviction petition was time barred because it was not filed within one year of the date the supreme court denied the application for appeal, despite petitioner's belief that he had one year from issuance of mandate to file his claim), app. denied (Tenn. Feb. 26, 2007); see, e.g., Antonio Bonds v. State, No. W2003-00260-CCA-R3-PC, Shelby County (Tenn. Crim. App. Nov. 14, 2003) (holding that one-year period for filing post-conviction action commenced from Tennessee Supreme Court's denial of petitioner's application for permission to appeal, rather than from court's denial of petitioner's petition for rehearing), app. denied (Tenn. Mar. 8, 2004); Sidney McGlowan v. State, No. W2000-01925-CCA-R3-PC, Shelby County (Tenn. Crim. App. Nov. 29, 2001) (noting rule that "final action" with respect to Tennessee Supreme Court is date of filing of court's opinion or denial of the application to appeal).

The petitioner also argues that the trial court should not have dismissed his claim without affording him a hearing to determine whether due process required tolling the statute of limitations. The petition alleges that the petitioner was never advised that counsel was no longer pursuing the appellate process on his behalf and that he could file an application for appeal with the supreme court. The petition alleges that counsel did not communicate with the petitioner and his family. He has not alleged, however, that counsel ever misrepresented anything to him. Our supreme court has

acknowledged that tolling is proper in a case where counsel's misrepresentations have deprived the petitioner of an opportunity to seek post-conviction relief. Williams v. State, 146 S.W.3d 464 (Tenn. 2001). Even accepting the petitioner's allegations as true, this is not such a case. Moreover, the petitioner's case does not fit within any of the exceptions to the statute of limitations codified at Code section 40-30-102(b).

Finally, we consider the petitioner's argument that the trial court erred in basing its dismissal of the petition in part upon its determination that an available post-conviction remedy was not a grant of a delayed Rule 11 appeal. This argument appears to be based upon a footnote in the trial court's order, which states that the petitioner's conviction became final "and it is not possible to allow any delayed appeals to the state Supreme Court."

A petitioner may be granted the opportunity to file a Rule 11 application for appeal as a post-conviction delayed appeal remedy. Tenn. Sup. Ct. R. 28, § 9(D)(b)(i). However, this form of relief is subject to the one-year statute of limitations. See T.C.A. § 40-30-102. Because the petition was untimely, any statement by the trial court regarding the availability of this form of relief does not change the result in this case.

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

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JOSEPH M. TIPTON, PRESIDING JUDGE